

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



December 31, 2004

Regulation Package #0902-23

CDSS MANUAL LETTER NO. CCL-04-15

TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, TITLE 22, DIVISION 6,
CHAPTER 8.5, RESIDENTIAL CARE FACILITIES FOR THE CHRONICALLY ILL

Regulation Package #0902-23**Effective 8/20/04****Sections 87801, 87819, 87819.1, 87854, 87865, and 87866**

This manual letter has been posted on the Office of Regulations Development website at http://www.dss.cahwnet.gov/ord/Residentia_634.htm.

As a result of testimony received from the public hearing and at the Department's discretion, post-hearing changes have been made to the regulations readopted on March 11, 2004. Those changes include that regardless of a pardon, expungement, or sealing of an individual's record by a court, the individual signing a LIC 508 must declare whether he/she has been convicted of a crime. The definition of "rehabilitation" is clarified to include "the effort to establish good character since the date of the last conviction." Also clarified is that individuals, except for certified foster parents, may request a criminal record exemption on their own behalf. Furthermore, Section 87819(a)(4)(B) is repealed since it deals with a different facility type, not RCFCIs. Finally, minor grammatical and nonsubstantive corrections have also been made.

These regulations were considered at the Department's public hearing held on September 17, 2004.

FILING INSTRUCTIONS

Revisions to all manuals are indicated by a vertical line in the left margin. The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Community Care Licensing changes was Manual Letter No. CCL-04-14. The latest prior manual letter containing Residential Care Facilities for the Chronically Ill regulation changes was Manual Letter No. CCL-04-04.

Page(s)

5 through 9
12 and 13
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86 and 87

Replace(s)

Pages 5 through 9
Pages 12 and 13
Pages 24 through 31
Pages 34.1 through 35.1
Pages 64 and 65
Page 83
Pages 86 and 87

Attachments

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Article 2. DEFINITIONS**87801 DEFINITIONS****87801**

- (a) The following definitions shall apply wherever the terms are used throughout Division 6, Chapter 8.5, except where specifically noted otherwise.
- (1) "Activities of daily living" mean various chores that must be completed by or for a person on a daily basis to meet his/her personal needs.
 - (A) Such chores shall include but not be limited to housework, meal preparation, laundry of clothes/linens and other washable items, taking medication, money management, transportation for personal or medical appointments, communicating with others either through telephone or in writing, dressing, eating, toileting, bathing, grooming, and ambulation.
 - (2) "Administrator" means the licensee, or the adult designated by the licensee to act in his/her behalf in the overall management of the facility.
 - (3) "Adult" means a person who is 18 years of age or older.
 - (4) "Ambulatory Person" means a person who is capable of demonstrating the mental competence and physical ability to leave a building without the assistance of any other person and without the use of any mechanical aid in case of an emergency.
 - (5) "Applicant" means any adult, firm, partnership, association, corporation, county, city, public agency or other governmental entity that has applied for a Residential Care Facility for the Chronically Ill license.
 - (6) "Appropriately Skilled Professional" means an individual who is licensed in California to perform the necessary medical procedures within his/her scope of practice as prescribed by a physician. This includes, but is not limited to, the following: Registered Nurse (RN), Licensed Vocational Nurse (LVN), Physical Therapist (PT), Occupational Therapist (OT) and Respiratory Therapist (RT). These professionals may include, but are not limited to, those persons employed by a home health agency, the resident, or the facility.

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- (7) "Authorized Representative" means any person or entity authorized by law to act on behalf of any resident. Such person or entity includes, but is not limited to, a conservator, a public placement agency, or the person who has durable power of attorney for health care for the resident.
- (8) "Automated External Defibrillator" (AED) means a light-weight, portable device used to administer an electric shock through the chest wall to the heart. Built-in computers assess the patient's heart rhythm, determine whether defibrillation (electrical shock) is needed and then administer the shock. Audible and/or visual prompts guide the user through the process.
- (b) (1) "Basic Rate" means the rate charged by a facility to provide basic services. For SSI/SSP recipients, the basic rate means the established nonmedical out-of-home care rate which includes any exempt income allowance but does not include that amount allocated for the recipient's personal and incidental needs.
- (2) "Basic Services" means those services specified in Section 87860 required by applicable laws and regulations, which are to be provided by the licensee in order to obtain and maintain a license to operate a Residential Care Facility for the Chronically Ill.
- (c) (1) "California Clearance" means an individual has no felony or misdemeanor convictions reported by the California Department of Justice. However, the individual may have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.
- (2) "Capacity" means the maximum number of persons authorized to be provided care and supervision at any one time in any licensed facility.
- (3) "Care and Supervision" means any one or more of the following activities provided or promised to be provided in the future by a person or facility to meet the needs of the residents:
 - (A) Assistance in dressing, grooming, bathing and other personal hygiene.
 - (B) Assistance with taking medication.
 - (C) Central storing and/or distribution of medications.
 - (D) Arrangement of and assistance with medical and dental care.
 - (E) Maintenance of house rules for the protection of residents.
 - (F) Arrangement and managing of resident schedules and activities.
 - (G) Maintenance and/or management of resident cash resources or property.

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(H) Monitoring food intake or special diets.

(I) Providing basic services as defined in Subsection (b)(2) above.

| (4) "Cash Resources" means:

(A) Monetary gifts.

(B) Tax credits and/or refunds.

(C) Earnings from employment or workshops.

(D) Personal and incidental need allowances from funding sources including but not limited to, SSI/SSP.

| (5) "Chronic, Life-Threatening Illness" means HIV disease or AIDS.

| (6) "Close Friend" means a person who is attached to another by feelings of personal regard as indicated by both parties involved.

| (7) "Completed Application" means:

(A) The applicant has submitted and the Department has received all required materials including: an approved fire clearance from the appropriate fire authority, a criminal record clearance on the applicant and any other individuals subject to such clearance.

| (8) "Conservator" means a person appointed by the Superior Court pursuant to the provisions of Section 1800 et seq. of the Probate Code or Section 5350 of the Welfare and Institutions Code, to care for the person, or estate, or person and estate, of another.

| (9) "Consultant" means a person professionally qualified by training or experience to provide expert information on a particular subject.

| (10) "Control of Property" means the right to enter, occupy, and maintain the operation of the facility property within regulatory requirements. Evidence of control of property may include, but is not limited to the following:

(A) a Grant Deed showing ownership; or

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- (B) the lease agreement or rental agreement; or
 - (C) a court order or similar documents which shows the authority to control the property pending outcome of a probate proceeding or an estate settlement.
- | (11) "Conviction" means:
 - (A) A criminal conviction in California; or
 - (B) Any criminal conviction of another state, federal, military or other jurisdiction, which if committed or attempted in California, would have been punishable as a crime in California.
- | (12) "Criminal Record Clearance" means an individual has a California clearance and an FBI clearance.
- | (13) "Culturally Appropriate Services" mean those services which are planned, offered, and provided by taking into consideration such characteristics of the residents as ethnic/racial group; primary language; preferred foods/diet and meal preparation; preferred manner of dress and clothing; religious affiliation; sexual preference; and educational background.
- (d) (1) "Deficiency" means any failure to comply with any provision of the Residential Care Facilities for Persons with Chronic, Life-Threatening Illness statute (Health and Safety Code, Section 1568.01, et seq.) and/or regulations adopted by the Department pursuant to this statute.
- (2) "Dementia" means a deterioration of intellectual function and other cognitive skills, leading to a decline in one's ability to perform activities of daily living.
- (3) "Department" means the California State Department of Social Services.

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- (4) "Developmental Disability" means a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely and constitutes a substantial handicap for such individual, as specified in Welfare and Institutions Code Section 4512(a).

Persons who are developmentally disabled shall include persons who have been diagnosed as having mental retardation, cerebral palsy, epilepsy, autism, or who have handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

- (5) "Direct Care Attendant" means an individual, employed by a Home Health Agency, who renders direct care services to a resident.

- (6) "Direct Care Services" means the assistance with or performance of services to meet the needs of the resident, including but not limited to, activities of daily living.

- (7) "Direct Care Staff" means those individuals employed by the facility and who provide direct care services to the residents including, but not limited to, assistance with activities of daily living.

- (8) "Director" means the Director of the California State Department of Social Services.

- (9) "Documentation" means written information required to be completed and maintained at the facility by the licensee.

- (10) "Do Not Resuscitate Directive" means the written directions of the resident or the person who holds Durable Power of Attorney for Health Care for the resident to the resident's primary care physician to withhold emergency resuscitation should the resident stop breathing and to request the issuance of a Do Not Resuscitate Order by the physician.

- (11) "Do Not Resuscitate Order" means the order of the resident's primary care physician to alert appropriately skilled professionals that the resident does not want measures to be taken to resuscitate him/her and to withhold emergency resuscitation should the resident stop breathing.

- (12) "Durable Power of Attorney for Health Care" means a power given to a person to act on behalf of another person in the event that the resident becomes unable to give informed consent to health care as specified in California Civil Code, Sections 2430 et seq.

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- (2) "Mental Disorder" means any of the disorders which render a person eligible for the services enumerated under the Lanterman-Petris-Short Act, commencing with Section 5000 of the Welfare and Institutions Code.
- (n) (1) "Nonambulatory persons" means persons unable to leave a building unassisted under emergency conditions. It includes any person who is unable, or likely to be unable, to physically and mentally respond to a sensory signal approved by the State fire Marshal, or an oral instruction relating to fire danger, and persons who depend upon mechanical aids such as crutches, walkers, and wheelchairs. A person is not deemed nonambulatory solely because he/she is deaf, blind or prefers to use a mechanical aid.
- (2) "Nutritionist" means a person who has a master's degree in food and nutrition, dietetics, or public health nutrition, or who is employed as a nutritionist by a county health department.
- (o) (Reserved)
- (p) (1) "Physician" means a person licensed as a physician by the California Medical Board or by the California Board of Osteopathic Examiners.
- (2) "Provision" or "Provide" means the licensee shall make available any service, personnel, or meet other requirements, directly or present evidence to the Department that the requirement has been met by some other means.
- (3) "Provisional License" means a license which is temporary, nonrenewable and issued for a period not to exceed twelve months.
- (4) "Psychosocial Support Services" means counseling services provided to the resident to enable him/her to accept/acknowledge his/her chronic illness and its probable cause and outcome.
- (q) (Reserved)
- (r) (1) "Registered Nurse Case Manager" means the registered nurse who is responsible for coordinating the delivery of services as identified in the Individual Services Plan.

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- (2) "Rehabilitation" means the effort to reestablish good character since the date of the last conviction, including, but not limited to, education, counseling or therapy, training, stable employment, restitution, remorse, changes in lifestyle, or community service.
- (3) "Relative" means the resident's spouse, parent, stepparent, son, daughter, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or any such person denoted by the prefix "grand" or "great" or the spouse of any of the persons specified in this definition, even after the marriage has been terminated by death or dissolution. Such relationships include kinships formed by birth or adoption.
- (4) "Resident" means any or all of the following: any adult receiving care and supervision, any emancipated minor receiving care and supervision, and any adult or unemancipated minor in a family unit.
- (5) "Residential Care Facility for the Chronically Ill" means any place, building, or housing arrangement which is maintained and operated to provide care and supervision to all or any of the following:
 - (A) Adults with HIV disease or AIDS,
 - (B) Emancipated minors with HIV disease or AIDS, or
 - (C) Family units as defined in Section 87801(f)(1) with adults or children or both with HIV disease or AIDS.
- (s) (1) "Serious Deficiency" means any deficiency that presents an immediate or substantial threat to the physical health, mental health or safety of the residents of Residential Care Facilities for the Chronically Ill.
- (2) "Shall" means mandatory.
- (3) "Significant Other" means a person, including a person of the same sex, with whom a resident was sharing a partnership prior to his/her placement in a Residential Care Facility for the Chronically Ill. The partnership involves two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring.
- (4) "Simplified Exemption" means an exemption granted on the Department's own motion, as authorized in Health and Safety Code Section 1568.09(c)(5), if the individual's criminal history meets specific criteria established by Department regulation.

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- (a) The Department shall conduct a criminal record review of all the persons listed in Subsection (b) below and shall have the authority to approve or deny a facility license, or employment, residence, or presence in the facility based upon the results of such review.
- (1) Prior to the Department issuing a license, the applicant, administrator and any adults, other than a client residing in the facility shall obtain a California criminal record clearance or exemption.

HANDBOOK BEGINS HERE

- (A) Section 1568.09(b) of the Health and Safety Code states in part:

If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in that capacity.

HANDBOOK ENDS HERE

- (2) A licensee or applicant for a license may request a transfer of a criminal record clearance from one state licensed facility to another, or from TrustLine to a state licensed facility by providing the following documents to the Department:
- (A) A signed Criminal Background Clearance Transfer Request, LIC 9182 (Rev. 4/02).
- (B) A copy of the individual's:
1. Driver's license, or
 2. Valid identification card issued by the Department of Motor Vehicles, or
 3. Valid photo identification issued by another state or the United States government if the individual is not a California resident.
- (C) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).

HANDBOOK BEGINS HERE

- (D) Section 1568.09(g) of the Health and Safety Code states:

The California Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal records clearances to be transferred.

HANDBOOK ENDS HERE

- (3) All individuals subject to criminal record review shall be fingerprinted and sign a Criminal Record Statement (LIC 508 [Rev. 1/03]) under penalty of perjury.

- (A) A person signing the LIC 508 must:

1. Declare whether he/she has been convicted of a crime, other than a minor traffic violation as specified in Section 87819(g) regardless of whether the individual was granted a pardon for the conviction, received an expungement pursuant to Penal Code 1203.4 or the individual's record was sealed as a result of a court order.
2. If convicted of a crime other than a minor traffic violation, as specified in Section 87819(g), provide information regarding the conviction.

- (4) The licensee shall submit the fingerprints to the California Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or complying with Section 87819(a)(2) prior to the individual's employment, residence, or initial presence in the facility.

- (A) Fingerprints shall be submitted to the California Department of Justice by the licensee or sent by electronic transmission to the California Department of Justice by a fingerprinting entity approved by the California Department of Social Services.

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- (b) The following persons and any other adults specified in Health and Safety Code Section 1568.09 shall be required to be fingerprinted and comply with applicable criminal records requirements:
- (1) The applicant for the license.
 - (A) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.
 - (2) Adults responsible for administration or direct supervision of staff.
 - (3) Any person, other than a resident, residing in the facility.
 - (4) Any facility personnel who provides resident assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Health and Safety Code Section 1338.5 or 1736.6, respectively, who is not employed, retained or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who fall under this exemption shall provide one copy of his or her current certification, prior to providing care, to the adult community care facility. Nothing in this paragraph restricts the right of the Department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Health and Safety Code Section 1558.
 - (5) Any staff person or employee who has contact with the residents.

87819 CRIMINAL RECORD CLEARANCE (Continued)**87819**

(c) The following individual's are exempt from the requirements applicable under Section 87819(b).

- (1) A medical professional, as defined in Section 87801(m)(1), who holds a valid license or certification from the individual's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee if all of the following apply:
 - (A) The criminal record of the individual has been cleared as a condition of licensure or certification by the individual's governing California medical care regulatory entity.
 - (B) The individual is providing time-limited specialized clinical care or services.
 - (C) The individual is providing care or services within the individual's scope of practice.
 - (D) The individual is not a community care facility licensee or an employee of the facility.
- (2) A third-party repair person or similar retained contractor, if all of the following apply:
 - (A) The individual is hired for a defined, time-limited job.
 - (B) The individual is not left alone with clients.
 - (C) When clients are present in the room in which the repair person or contractor is working, a staff person who has a criminal record clearance or exemption is also present.
- (3) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client of the facility, and are in the facility at the request of that client or client's legal decision maker.
 - (A) The exemption shall not apply to an individual who is a community care facility licensee or an employee of the facility.

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- (4) Clergy and other spiritual caregivers who are performing services in common areas of the residential care facility, or who are advising an individual client at the request of, or with permission of, the client.
 - (A) The exemption shall not apply to an individual who is a community care facility licensee or an employee of the facility.
- (5) Members of fraternal, service and similar organizations who conduct group activities for clients if all of the following apply:
 - (A) Members are not left alone with the clients.
 - (B) Members do not transport clients off the facility premises.
 - (C) The same group does not conduct such activities more often than once a month.
- (6) A volunteer if all of the following apply:
 - (A) The volunteer is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption.
 - (B) The volunteer is never left alone with clients.
 - (C) The volunteer does not provide any client assistance with dressing, grooming, bathing or personal hygiene.

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(7) The following individuals unless contraindicated by the client's needs and service plan:

(A) A spouse, relative, significant other, or close friend of a client.

(B) An attendant or facilitator if the attendant or facilitator is not employed, retained or contracted by the licensee.

(C) The exemptions in Sections 87819(d)(7)(A) or (B) apply only if the individual is visiting the client or providing direct care and supervision to that client only.

(8) Nothing in this paragraph shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(d) All individuals subject to a criminal record review pursuant to Health and Safety Code Section 1568.09 shall prior to working, residing or volunteering in a licensed facility:

(1) Obtain a California clearance or a criminal record exemption as required by the Department or

(2) Request a transfer of a criminal record clearance as specified in Section 87819(a)(2) or

(3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 87819.1(r), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.

(e) Violation of Section 87819(d) will result in a citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars (\$100) per violation by the Department.

(1) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1568.0822.

(f) Violation of Section 87819(d) may result in a denial of the license application or suspension and/or revocation of the license.

87819	CRIMINAL RECORD CLEARANCE (Continued)	87819
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- (g) If the criminal record transcript of any individuals specified in the Health and Safety Code Section 1568.09 discloses a plea or verdict of guilty or a conviction following a plea of nolo contendere for a crime other than a minor traffic violation, for which the fine was less than \$300, and an exemption pursuant to Section 87219.1(a) has not been granted, the Department shall take the following actions:
- (1) For initial applicant, denial of the application.
 - (2) For current licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license.
 - (3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1568.092 and deny the application or revoke the license if the individual continues to provide services and/or reside at the facility.
 - (4) For individuals residing in the facility, including spouses of the applicant, licensee or employee, exclusion of the affected individual pursuant to Health and Safety Code Section 1568.092 and denial of the application or revocation of the license if the individual continues to provide services and/or reside in the facility.
- (h) The Department shall notify the licensee and the affected individual associated with the facility, in concurrent, separate letters, that the affected individual has a criminal conviction and needs to obtain a criminal record exemption.
- (i) The licensee shall maintain documentation of criminal record clearances or criminal record exemptions of employees in the individual's personnel file as required in Section 87866.
- (j) The licensee shall maintain documentation of criminal record clearances or criminal record exemptions of volunteers that require fingerprinting and non-client adults residing in the facility.
- (1) Documentation shall be available at the facility for inspection by the Department.

87819	CRIMINAL RECORD CLEARANCE (Continued)	87819
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- | (k) The Department may seek verification from a law enforcement agency or court of an individual's criminal record as reported to the Department from any member of the public or affected individual.
- | (1) Upon obtaining confirmation from a law enforcement agency or court of the offense, the Department shall proceed as if this criminal record information was provided by the California Department of Justice.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Sections 1568.072 and 1568.09, Health and Safety Code.

87819.1 CRIMINAL RECORD EXEMPTION**87819.1**

- (a) The Department will notify a licensee to act immediately to terminate the employment of, remove from the facility or bar from entering the facility any person described in Sections 87819.1(a)(1) through (5) below while the Department considers granting or denying an exemption. Upon notification, the licensee shall comply with the notice.
- (1) Any person who has been convicted of, or is awaiting trial for, a sex offense against a minor;
 - (2) Any person who has been convicted of a felony;
 - (3) Any person who has been convicted of an offense specified in Sections 243.4, 273a, 273d, 273g, or 368 of the Penal Code or any other crime specified in Health and Safety Code Section 1568.09(c)(4);
 - (4) Any person who has been convicted of any crime specified below:
 - (A) Battery
 - (B) Shooting at Inhabited Dwelling
 - (C) Corporal Injury on Spouse/Cohabitant
 - (D) Discharging Firearm with Gross Negligence
 - (E) Exhibiting Weapon/Firearm
 - (F) Threat to Commit a Crime Resulting in Gross Bodily Injury or Death
 - (G) Criminal Threat to Harm or Injure Another Person
 - (H) Cruelty to Animals
 - (I) Willful Harm or Injury to Child; or
 - (5) Any other person ordered to be removed by the Department.

87819.1 CRIMINAL RECORD EXEMPTION (Continued)**87819.1**

- (b) In addition to the requirements of Section 87819.1(a), the licensee must return the confirmation of removal form that is sent by the Department, within five (5) days of the date of the form, that confirms under penalty of perjury that the individual has been removed from the facility.
- (1) Confirmation must be made on either a Removal Confirmation – Exemption Needed, LIC 300A (Rev. 9/03), Removal Confirmation - Denial, LIC 300B (Rev. 9/03), Removal Confirmation - Rescinded, LIC 300C (Rev. 9/03), or Removal Confirmation - Nonexemptible, LIC 300D (Rev. 9/03).
- (c) After a review of the criminal record transcript, the Department may grant an exemption if:
- (1) The applicant/licensee requests an exemption for himself or herself, or
- (2) The applicant/licensee requests an exemption in writing for an individual associated with the facility, or
- (3) The applicant/licensee chooses not to seek an exemption on the affected individual's behalf, the affected individual requests an individual exemption in writing, and
- (4) The affected individual presents substantial and convincing evidence satisfactory to the Department that he/she has been rehabilitated and presently is of such good character as to justify being issued or maintaining a license, employment or residence in a licensed facility.
- (d) To request a criminal record exemption, a licensee or license applicant must submit information that indicates that the individual meets the requirements of Section 87819.1(c)(4). The Department will send a written notice to the licensee or license applicant that lists the information that must be submitted to request a criminal record exemption. The information must be submitted within forty-five (45) days of the date of the Department's notice.
- (1) Individuals who submit a criminal record exemption request shall cooperate with the Department by providing any information requested by the Department, including, but not limited to, police reports and certified court documents to process the exemption request, pursuant to Section 87819.1(e).
- (2) If the individual for whom the criminal record exemption is requested is an employee or resident other than a spouse or dependent family member and the licensee/license applicant does not submit the information listed in the Department's written notice within 45 days of the date of the notice, the Department may cease processing the exemption request and close the case.

87819.1	CRIMINAL RECORD EXEMPTION (Continued)	87819.1
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- (3) If the individual for whom the criminal record exemption is requested is an applicant, licensee, spouse or dependent family member and the licensee/license applicant does not submit the information listed in the Department's written notice within 45 days of the date of the notice, the Department may deny the exemption request.
- (4) Individuals may request a criminal record exemption on their own behalf if the licensee or license applicant:
 - (A) Chooses not to request the exemption and
 - (B) Terminates the individual's employment because of the individual's criminal history, or
 - (C) Removes the individual who resides in the facility because of the individual's criminal history.
- (e) The Department shall consider factors including, but not limited to, the following as evidence of good character and rehabilitation:
 - (1) The nature of the crime including, but not limited to, whether it involved violence or a threat of violence to others.
 - (2) Period of time since the crime was committed and number of offenses.
 - (3) Circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition.
 - (4) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.
 - (5) Granting by the Governor of a full and unconditional pardon.
 - (6) Character references.
 - (A) All character references shall be on a Reference Request form (LIC 301E - Exemptions [Rev. 7/03]).
 - (7) A certificate of rehabilitation from a superior court.
 - (8) Evidence of honesty and truthfulness as revealed in exemption application documents.
 - (A) Documents include, but are not limited to:

87819.1 CRIMINAL RECORD EXEMPTION (Continued)**87819.1**

1. A Criminal Record Statement (LIC 508, Criminal Record Statement [Rev. 1/03]) and
 2. The individual's written statement/explanation of the conviction and the circumstances about the arrest.
- (9) Evidence of honesty and truthfulness as revealed in exemption application interviews and conversations with the Department.
- (f) The Department shall also consider the following factors in evaluating a request for an exemption:
- (1) Facility and type of association.
 - (2) The individual's age at the time the crime was committed.
- (g) The Department may deny the individual's exemption request if:
- (1) The licensee and/or the affected individual fails to provide documents requested by the Department, or
 - (2) The licensee and/or the affected individual fails to cooperate with the Department in the exemption process.
- (h) The reasons for any exemption granted or denied shall be in writing and kept by the Department.
- (i) The Department has the authority to grant a criminal record exemption that places conditions on the individual's continued licensure, and employment or presence in a licensed facility.
- (j) It shall be conclusive evidence that the individual is not of such good character as to justify issuance of an exemption if the individual:
- (1) Makes a knowingly false or misleading statement regarding:
 - (A) Material relevant to their application for a criminal record clearance or exemption,
 - (B) His or her criminal record clearance or exemption status to obtain employment or permission to be present in a licensed facility, after the Department has ordered that they be excluded from any or all licensed facilities, or

87819.1 CRIMINAL RECORD EXEMPTION (Continued)**87819.1**

- (C) His or her criminal record clearance or exemption status in order to obtain a position with duties that are prohibited to him/her by a conditional exemption; or
 - (2) Is on probation or parole.
 - (A) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the Department may, in its discretion, grant a criminal record exemption notwithstanding Section 87819.1(j)(2).
- (k) The Department shall consider granting a criminal record exemption if the individual's criminal record history meets all of the applicable criteria specified in Sections 87819.1(k)(1) through (6) and the individual provides the Department with substantial and convincing evidence of good character as specified in Section 87819.1(c)(4). For purposes of this section, a violent crime is a crime that, upon evaluation of the code section violated and/or the reports regarding the underlying offense, presents a risk of harm or violence.
 - (1) The individual has been convicted of one nonviolent misdemeanor, and one year has lapsed since completing the most recent period of incarceration or probation.
 - (2) The individual has been convicted of two or more nonviolent misdemeanors and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (3) The individual has been convicted of one or more violent misdemeanors and 15 consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (4) The individual has been convicted of one nonviolent felony and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (5) The individual has been convicted of two or more nonviolent felonies and ten consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (6) The individual has not been convicted of a violent felony.
 - (7) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the period of lapsed time required in Sections 87819.1(k)(1) through (5) above shall begin from the last date of conviction(s).

87819.1 CRIMINAL RECORD EXEMPTION (Continued)**87819.1**

- (l) It shall be a rebuttable presumption that an individual is not of such good character as to justify the issuance of an exemption if the individual fails to meet the requirements specified in Sections 87819.1(k)(1) through (6).
- (m) The Department shall not grant an exemption if the individual has a conviction for any offense specified in Section 1568.09(f)(1) of the Health and Safety Code.

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Health and Safety Code Section 1568.09(f)(1) provides that no exemption shall be granted if an individual has been convicted of any of the following offenses:

- (1) Penal Code Sections 136.1 and 186.22 – Gang related/Intimidation of witnesses or victims.
- (2) Penal Code Sections 187, 190 through 190.4 and 192(a) – Any murder/Attempted murder/Voluntary manslaughter.
- (3) Penal Code Section 203 – Any mayhem.
- (4) Penal Code Section 206 - Felony torture.
- (5) Penal Code Sections 207, 208, 209, 209.5, 210 – Kidnapping.
- (6) Penal Code Sections 211, 212.5, 213, 214 – Any robbery.
- (7) Penal Code Section 215 – Carjacking.
- (8) Penal Code Section 220 – Assault with intent to commit mayhem, rape, sodomy or oral copulation.
- (9) Penal Code Section 243.4 – Sexual battery.
- (10) Penal Code Section 261(a), (a)(1), (2), (3), (4) or (6) – Rape.

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87819.1 CRIMINAL RECORD EXEMPTION (Continued)**87819.1**

- (q) If a request for an exemption has been denied, the individual shall be excluded for a period of two years unless the individual has been convicted of a crime for which no exemption may be granted pursuant to Section 87819.1(m). If a request for an exemption has been denied based on a conviction of a crime for which no exemption may be granted, the individual shall be excluded for the remainder of the individual's life.
- (1) If the Department determines during the review of an exemption request, that the individual was denied an exemption for a conviction of a crime for which an exemption may be granted within the preceding two years, the Department shall cease any further review of the request until two years have elapsed from the date of the denial. In cases where the individual requested a hearing on an exemption denial, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department upholding the denial. In cases where the individual submitted a petition for reinstatement or reduction in penalty pursuant to Government Code Section 11522 that was denied, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department denying the petition.
 - (2) An exclusion order based solely upon a denied exemption shall remain in effect and the individual shall not be employed in or present in a licensed facility or certified home, unless either a petition or an exemption is granted.
 - (3) If an individual who has previously been denied an exemption re-applies after the relevant time period described in Section 87819.1(q)(1) above, the Department may, in accordance with the provisions in Section 87819.1 et seq., grant or deny the subsequent request for an exemption.
 - (4) If an individual submits a petition pursuant to Government Code Section 11522 for reinstatement or reduction of penalty for an exclusion, an individual must submit his/her fingerprints through an electronic fingerprinting system approved by the Department and submit to the Department a statement of the reason why the individual should be permitted to work or be present in a facility, along with all information required of an individual requesting a criminal record exemption as provided in this section. If it is determined, based upon information provided by the Department of Justice, that the individual has been convicted of a crime for which no exemption may be granted, the petition shall be denied. An individual's failure to submit fingerprints or other information as requested by the Department, shall be grounds for denial of the petition. The burden shall be on the petitioner to prove sufficient rehabilitation and good character to justify the granting of the petition.

87819.1	CRIMINAL RECORD EXEMPTION (Continued)	87819.1
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- (r) A licensee or applicant for a license may request a transfer of a criminal record exemption from one state licensed facility to another by providing the following documents to the Department:
- (1) A signed Criminal Record Exemption Transfer Request, LIC 9188 (Rev. 9/03).
- (2) A copy of the individual's:
- (A) Driver's license, or
- (B) Valid identification card issued by the Department of Motor Vehicles, or
- (C) Valid photo identification issued by another state or the United States government if the individual is not a California resident.
- (3) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).
- (s) The Department may consider factors including, but not limited to, the following in determining whether or not to approve the transfer of an exemption from one facility to another:
- (1) The basis on which the Department granted the exemption;
- (2) The nature and frequency of client contact in the new position;
- (3) The category of facility where the individual wishes to transfer;
- (4) The type of clients in the facility where the individual wishes to transfer;
- (5) Whether the exemption was appropriately evaluated and granted in accordance with existing exemption laws or regulations.
- (6) Whether the exemption meets current exemption laws or regulations.
- (t) If the Department denies the individual's request to transfer a criminal record exemption, the Department shall provide the individual and the licensee with written notification that states the Department's decision and informs the affected individual of their right to an administrative hearing to contest the Department's decision.

87819.1	CRIMINAL RECORD EXEMPTION (Continued)	87819.1
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- (u) At the Department's discretion, an exemption may be rescinded if it is determined that:
- (1) The exemption was granted in error or
 - (2) The exemption does not meet current exemption laws or regulations or
 - (3) The conviction for which an exemption was granted subsequently becomes non-exemptible by law.
- (v) The Department may rescind an individual's criminal record exemption if the Department obtains evidence showing that the individual engaged in conduct which is inconsistent with the good character requirement of a criminal record exemption, as evidenced by factors including, but not limited to, the following:
- (1) Violations of licensing laws or regulations;
 - (2) Any conduct by the individual that indicates that the individual may pose a risk to the health and safety of any individual who is or may be a client;
 - (3) Nondisclosure of a conviction or evidence of lack of rehabilitation that the individual failed to disclose to the Department, even if it occurred before the exemption was issued; or
 - (4) The individual is convicted of a subsequent crime.
- (w) If the Department rescinds an exemption the Department shall:
- (1) Notify the licensee and the affected individual in writing; and
 - (2) Initiate an administrative action.
- (x) If the Department learns that an individual has been convicted of a crime after obtaining a criminal record clearance or exemption, the Department, at its sole discretion, may immediately initiate an administrative action to protect the health and safety of clients.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Sections 1568.072, 1568.082, 1568.09, 1568.092, and 13143, Health and Safety Code.

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87853	FOLLOW-UP VISITS TO DETERMINE COMPLIANCE	87853
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- (a) A follow-up visit shall be conducted to determine compliance with the plan of correction specified in the notice of deficiency.
 - (1) The follow-up visit shall be conducted within ten working days following the dates of corrections specified in the notice of deficiency, unless the licensee has demonstrated that the deficiency was corrected as required.
 - (2) Except as specified in Section 87854, no penalty shall be assessed unless a follow-up visit is conducted.
- (b) If a follow-up visit indicates that a deficiency was not corrected on or before the date specified in the notice of deficiency, the evaluator shall issue a notice of penalty (Facility Civil Penalty Assessment - LIC 421 (10/89)).
- (c) A notice of penalty shall be in writing and shall include:
 - (1) The amount of penalty assessed, and the date the payment is due.
 - (2) The name and address of the agency responsible for collection of the penalty.
- (d) When an immediate penalty has been assessed and the correction is made while the evaluator is present, a follow-up visit is not required.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Section 1568.07 and .072, Health and Safety Code.

87854	PENALTIES	87854
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- (a) A penalty of \$50 per day, per cited violation, shall be assessed for serious deficiencies that are not corrected by the date specified in the notice of deficiency, up to a maximum of \$150 per day.
- (b) An immediate penalty of \$100 per cited violation shall be assessed if any individual required to be fingerprinted under Health and Safety Code Section 1568.09(b) has not obtained a California clearance or a criminal record exemption, requested a transfer of a criminal record clearance or requested and been approved for a transfer of an exemption as specified in Section 87819(d) prior to the individual's employment, residence or initial presence in the facility.
 - (1) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1568.09.
 - (2) Progressive civil penalties specified in Sections 87854(c) and (d) below shall not apply.
- (c) When a facility is cited for a deficiency and violates the same regulation subsection within a 12-month period, the facility shall be cited and an immediate penalty of \$150 per cited violation shall be assessed for one day only. Thereafter a penalty of \$50 per day, per cited violation, shall be assessed until the deficiency is corrected.
- (d) When a facility, that was cited for a deficiency subject to the immediate penalty assessment specified in Section 87854(c) above, violates the same regulation subsection within a 12-month period of the last violation, the facility shall be cited and an immediate penalty of \$1,000 per cited violation shall be assessed for one day only. Thereafter a penalty of \$100 per day, per cited violation, shall be assessed until the deficiency is corrected.
 - (1) For purposes of Sections 87854(c) and (d) above, a regulation subsection is the regulation denoted by a lower-case letter after the main regulation number.

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An example of the same regulation subsection are Sections 87218(a)(2) and 87218(a)(5).
Sections 87218(a) and 87218(b) are not the same regulation subsection.

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87865	PERSONNEL REQUIREMENTS (Continued)	87865
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- (j) Prior to employment or initial presence in the facility, all employees and volunteers subject to a criminal record review shall:
- (1) Obtain a California clearance or a criminal record exemption as required by law or Department regulations or
 - (2) Request a transfer of a criminal record clearance as specified in Section 87819(a)(2) or
 - (3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 87819.1(r), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.
- (k) Residents shall not be used as substitutes for required staff but shall be permitted, as a voluntary part of their program of activities, to participate in household duties and other tasks suited to the resident's needs and abilities.
- (1) Such duties and tasks shall be specified in the resident's needs and services plan.
- (l) When regular staff members are absent, there shall be coverage by personnel capable of performing assigned tasks as evidenced by on-the-job performance.

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87866	PERSONNEL RECORDS	87866
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- (a) Personnel records shall be maintained on the licensee, administrator and each employee, and shall contain the following information:
- (1) Employee's full name.
 - (2) Driver's license number if the employee is to transport residents.
 - (3) Date of employment.
 - (4) A statement signed by the employee that he/she is at least 18 years of age.
 - (5) Home address and phone number.
 - (6) Documentation of educational background, continuing education hours, training and/or experience, as specified in Section 87865.
 - (7) Past work experience, including types of employment and former employers.

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- (A) Section 1568.09(c)(4) of the Health and Safety Code provides in part:

Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision.

- (B) Section 1568.09(b)(2) of the Health and Safety Code provides:

Any person, other than a client, residing in the facility.

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- (8) Duties of the employee.
- (9) Termination date, if no longer employed by the facility.

87866	PERSONNEL RECORDS (Continued)	87866
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- (10) Documentation of first aid training.
- (11) Criminal record statement signed by the employee, as required by Section 87819.
- (12) Documentation of either a criminal record clearance or a criminal record exemption as required by Section 87819(d).
- (13) A health screening as specified in Section 87865(h).
- (14) Tuberculosis test documents as specified in Section 87865(h).
- (b) Personnel records shall be maintained for all volunteers and shall contain the following:
 - (1) A health statement as specified in Section 87865(h)(2)(C).
 - (2) Tuberculosis test documents as specified in Section 87865(h).
 - (3) For volunteers that are required to be fingerprinted pursuant to Section 87819:
 - (A) A signed statement regarding their criminal record history as required by Section 87819(a)(3).
 - (B) Documentation of either a criminal record clearance or a criminal record exemption as required by Section 87819(d).
- (c) All personnel records shall be retained for at least three years following termination of employment.
- (d) All personnel records shall be maintained at the facility site and be available to the licensing agency for review.
 - (1) The licensee shall be permitted to retain such records in a central administrative location provided that they are readily available to the Department at the facility site upon request.
- (e) In all cases, personnel records shall document the hours actually worked.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Section 1568.072, Health and Safety Code.